IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO. 12420 OF 1994

For Approval and Signature:

THE HON'BLE MR.JUSTICE RAVI R.TRIPATHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 of any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SHIVSHAKTI ROLLING MILLS - Petitioner(s)
Versus
PATEL RASIKLAL MANGALDAS & 2 - Respondent(s)

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Appearance :
MR. P.K. JANI for Petitioner No(s).: 1.
MR. P.M. THAKKAR for Respondent No(s).: 1.
NOTICE SERVED for Respondent No(s).: 2, 3,4.

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CORAM :THE HON'BLE MR.JUSTICE RAVI R.TRIPATHI

Date : 20/06/2005

ORAL JUDGMENT

1. Shivshakti Rolling Mills, a partnership firm, through its partner, is before this Court challenging Order dated 4th December, 1994 passed by the Deputy Secretary (Appeals), Revenue Department, in Revision Application No.SRD/MSN/BKHP/12/94. The authority, by the order under challenge, was pleased to quash and set aside Order dated 8th January, 1985 of the District Panchayat, Mehsana, granting change of user of land bearing Survey No.469/1 for which Non-Agricultural (N.A.) permission was granted by Order dated 6th February, 1982 by the Taluka Panchayat, Kadi.

2. Mr.P.K.Jani, learned Advocate appearing for the petitioner, vehemently submitted that in view of the settled legal position by decisions of this Court as well as the Apex Court, the authority i.e. Deputy Secretary (Appeals) ought not to have entertained the Revision Application after a lapse of about four years from the date of decision, which was challenged in the revision. Besides, the learned Advocate for the petitioner submitted that the respondents had approached the Court of the learned Civil Judge (J.D.), Kadi, by filing Regular Civil Suit No.288 of 1986,

which was decided against the plaintiff. Being aggrieved of that, the plaintiff had approached the Court of the learned District Judge by filing Regular Civil Appeal No.42 of 1988. The learned Advocate made available a xerox copy of the judgement in the said appeal, which too was dismissed on 20th July, 1991. The learned Advocate further submitted that despite his best efforts, he could not find out any further proceedings being filed against the said judgement before this Court.

3. The learned Advocate appearing for the respondents submitted that despite his repeated communications to respondent nos.1, 2 and 3, they have not responded to the learned Advocate, therefore, he is not in a position to state as to whether the parties have pursued the matter in higher forum.

4. Mr.P.K.Jani, learned Advocate for the petitioner, submitted that the rights of the parties stand adjudicated by the Civil Courts. He submitted that by

the impugned order, the Deputy Secretary (Appeals) had quashed Order dated 8th January, 1985 subject to adjudication of rights of the parties by the civil courts. He submitted that in view of the fact that by the Court of the learned Civil Judge (J.D.), Kadi, and by the Court of the learned District Judge, Mehsana, the rights of the present petitioner are upheld, on that short ground alone, the order under challenge dated 4th October, 1994 quashing and setting aside Order dated 8th January, 1985 is required to be quashed and set aside. Besides, Mr.Jani submitted that since the date of the order granting the change of user of the land in question, the petitioner is using the land for industrial purpose and a rolling mill is run at the place. He submitted that therefore, the impugned order is required to be quashed and set aside even on merits of the case, besides on the point of challenge to order dated 8th January, 1985 being stale.

The learned Advocate for the respondents could

not support the order under challenge either on the point of limitation or on merits. He is not able to dislodge the factual position, namely, the civil rights are decided against the respondents by the trial Court as well as the first Appellate Court.

5. In view of the above discussion, this petition is allowed. The impugned order, Annexure-G, dated 4th October, 1994 is quashed and set aside. Rule is made absolute. No order as to costs.

(***Ravi R.Tripathi, J.***)

*kamlesh**